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In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 365

THE ASSOCIATED PRESS, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

The Solicitor General, on behalf of the respondent, National Labor Relations Board, joins in this petition, upon the ground that the constitutionality of the National Labor Relations Act[1] as applied to the petitioner is an important question of Federal law, which has not been but should be settled by this Court. A decision on the issues raised in the instant case will clarify the valid scope and application of the Act in an important category of fact situations, and settle certain questions frequently raised under the First and Fifth Amendments.

[1] C. 372, 49 Stat. 449 (29 U. S. C. Sup. I, Sec. 151 *et seq.*), approved July 5, 1935. The text of the Act is printed as an appendix hereto, pp. 12–30, *infra*.

In order that the issues may be properly defined, certain of the allegations in the petition and contentions in the accompanying brief call for refutation or comment.

PETITIONER'S POINT I

Petitioner's argument that "the employer-employee relationship, whether in production, in the current of commerce or on the very instrumentalities of commerce, is a purely local one which does not directly affect interstate commerce and therefore is not susceptible of Federal regulation" (Br. p. 9), is wholly without foundation. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548; *Second Employers' Liability Cases*, 223 U. S. 1; *Southern Ry. Co.* v. *United States*, 222 U. S. 20; *Baltimore & Ohio R. R.* v. *Interstate Commerce Comm'n*, 221 U. S. 612.

In the *Texas & New Orleans* case, this Court entertained no doubt of Federal authority under the commerce clause to safeguard the freedom of employees in self-organization and choice of representatives in negotiations with their employers, by prohibiting interference therewith by interstate carriers in their relations with various classes of their employees, including those not directly engaged in interstate commerce such as baggagemen, ticket agents, train dispatchers, and other clerical employees.

The National Labor Relations Act, like the Railway Labor Act of 1926 upheld in the *Texas & New*

Orleans decision, proceeds on principles fundamental to the promotion of harmonious industrial relations and the protection of interstate commerce from the burdens and obstructions caused by industrial strife; namely, protection of employees in their self-organization, and encouragement of the adjustment of disputes between employers and employees through conference, negotiation, and bargaining. Both statutes require compliance with the procedure of collective bargaining; neither imposes compulsory arbitration nor requires acceptance by either party of particular demands in bargaining negotiations. While the Railway Labor Act included also a somewhat elaborate machinery for voluntary mediation and arbitration particularly designed for the railroad industry, such machinery is available on a similar voluntary basis through the work of the Conciliation Service of the United States Department of Labor, which the National Labor Relations Act does not attempt to duplicate.

The prohibition against interference, influence, and coercion in the Railway Labor Act did not, as petitioner maintains (Br. p. 12–13), apply merely to the selection of representatives for the purposes of arbitration, but as this Court and the lower courts expressly pointed out in the *Texas & New Orleans* case, included the same protection in negotiations between the employer and employees; that is, in collective bargaining (281 U. S. at p. 570; 38 F. (2d) at p. 16; 24 F. (2d) at p. 431). Indeed,

the carrier in the *Texas & New Orleans* case had refused to submit the pending wage controversy either to arbitration or mediation by the Railway Labor Board (281 U. S. at p. 559; 24 F. (2d) at p. 432–3). The present Act goes no further than protection of liberties which the Court there held to be within the constitutional scope of Federal action under the commerce power and without offense to the Fifth Amendment.

In the *Texas & New Orleans* case, this Court expressly held "inapplicable" the case of *Adair* v. *United States*, 208 U. S. 161, relied upon there, as here (Br. p. 9–10). The case is likewise inapplicable here. Petitioner cannot complain of the statute on constitutional grounds since, like the objecting carrier in the *Texas & New Orleans* case, it has "no constitutional right to interfere with the freedom of the employees in making their selections" of representatives for collective action (281 U. S. at p. 571).

In *Pennsylvania Federation* v. *Pennsylvania R. R. Co.*, 267 U. S. 203, cited by petitioner (Br. p. 10), this Court refused to enjoin the railroad from ignoring the ruling of the Labor Board because the statute itself (the 1920 Act) granted no enforceable rights. This led to the Act of 1926, the prohibitions of which were upheld in the *Texas & New Orleans* case, *supra*. The 1926 Act was amended in 1934, and, as so amended, guaranteeing the same rights protected by the National Labor Relations Act, has been upheld in *Virginian Rail-*

way Co. v. *System Federation No. 40*, 84 F. (2d) 641 (C. C. A. 4th), now pending in this Court on petition for certiorari, No. 324, October Term, 1936.

PETITIONER'S POINT II

The basic problems of protecting interstate and foreign commerce by the regulation of such labor relations are not limited to the railroads, and a policy constitutional and of proved success there must be constitutional and equally successful in other interstate enterprises whose uninterrupted operations Congress may reasonably regard as important or essential for the interstate and foreign commercial life of the Nation. Under the circumstances disclosed in the record and found by the Board and the Circuit Court of Appeals, petitioner's editorial employees are engaged "in" interstate and foreign commerce or at a "throat" in a well defined current or flow of such commerce. *Carter* v. *Carter Coal Co.*, Nos. 636 and 651, October Term, 1935; *A. L. A. Schechter Corp.* v. *United States*, 295 U. S. 495, 543. The question of the Act's application to an employer some or all of whose employees are engaged in producing a commodity, under varying circumstances, is not involved here.

It is not material in this connection that the transmission of some of the news received at the New York office may be interrupted for a very brief period and given that change of expression,

if any, necessary to insure the objectives of speed and accuracy. Cf. *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 35; *Stafford* v. *Wallace*, 258 U. S. 495, 515, 516. Such editorial activities are an integral and indivisible part of respondent's enterprise in interstate and foreign commerce; and the Act is validly applicable because it is addressed to abuses which, unless corrected, recurrently and directly burden the flow of such commerce. With one exception, there is no conflict among the decisions of the lower courts as to the validity of the Act's application to this category of situations. *Bradley Lumber Co.* v. *National Labor Relations Board*, 84 F. (2d) 97, 99 (C. C. A. 5th), now pending in this Court on petition for certiorari, No. 153, October Term, 1936; *National Labor Relations Board* v. *New England Transportation Co.*, 14 F. Supp. 497 (Conn.); *S. Buchsbaum & Co.* v. *Beman*, 14 F. Supp. 444, 448–9 (N. D. Ill.); *Precision Castings Co.* v. *Boland*, 13 F. Supp. 877, 884–5 (W. D. N. Y.); *Heller Bros. Co.* v. *Lind*, decided April 2, 1936 (D. C.); *Associated Press* v. *Herrick*, 13 F. Supp. 897, 898–9 (S. D. N. Y.) *Contra: Stout* v. *Pratt*, 12 F. Supp. 864 (W. D. Mo.).

PETITIONER'S POINT III

The validity under the Fifth Amendment of the prohibition against interference with employees' self-organization and free choice of representatives through discrimination against employees (Secs. 8 (1), 8 (3)) is fully sustained by the *Texas & New Orleans* case, *supra*. The decree there up-

held included the requirement of reinstatement of certain employees discharged on account of organizational activity subsequent to the entry of a temporary injunction by the District Court. This Court's opinion referred to the discharges not only in connection with the contempt proceedings (281 U. S. at p. 557), but also expressly listed them among the forms of interference practiced by the railroad and before the Court for decision (*Id.* at p 560). When the Court said that the Railway Labor Act did not "interfere with the normal exercise of the right of the carrier to select its employees or to discharge them" (p. 571), it was obviously holding that the use of the discharge weapon for the purpose of interfering with "the right of the employees to have representatives of their own choosing" was not a *"normal exercise"* of the right to hire and discharge which is protected by the Fifth Amendment. See also *R. R. Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 369. As the court below properly ruled (R. 445):

> This act does not hamper the legitimate right of the employer, who may discharge his employees for inefficiency or any other cause agreeable to him, provided he does not use the power of discharge as a weapon for interfering with the right of employees to organize and bargain collectively. The employer retains full control to bargain with his employees over the wage he shall pay and the working conditions he shall furnish. He remains the master of the operation of his business.

Petitioner's objections under the due process clause (Br., pp. 15–18) are based chiefly on the misconceptions, first, that the validity of the Act's provisions regarding refusal to bargain collectively, majority representation in collective bargaining, and the determination of the bargaining unit (Secs. 8 (5), 9 (a), 9 (b)) are before the Court for decision, and, second, that the Act fixes wages, hours, or other conditions of employment.

As to the first, the sole ground of the Board's complaint and the order upheld below is the prohibition safeguarding from interference, restraint or coercion the employees' existing rights of self-organization and freedom in the choice of representatives for collective action, under subdivisions (1) and (3) of Section 8. The other provisions challenged by the petitioner are not involved in this proceeding at all. The fact is that there is now pending for decision by the Board a proceeding under Section 8 (5) of the Act against this petitioner on a complaint of refusal to bargain collectively with the representatives designated by a majority of its editorial employees. The questions now sought to be raised by petitioner may well be involved in this subsequent proceeding should any order made therein aggrieve petitioner or be claimed to infringe its constitutional liberties.

There is nothing to justify petitioner's further contention that the Act seeks to establish minimum or maximum wages or hours by legislative fiat, and infringes on freedom of contract in pri-

vate bargaining. The statute determines no bargain or terms of contract, nor does the Board; these are left entirely to negotiation by the parties themselves through their duly chosen representatives, that is, by collective private bargaining. Should any contract be arrived at through this familiar, judicially approved procedure, it would have no more or no other binding quality by virtue of the statute than in the absence of the statute.

The Act merely guarantees that the procedure of collective bargaining be not denied by the petitioner if and as petitioner's employees select representatives for that purpose, under appropriate circumstances (Sec. 8 (5)). Petitioner's argument proceeds upon the mistaken theory that the only form of "private bargaining" protected by the due process clause is individual bargaining. The liberty of employees to exercise their right of self-organization and choice of representatives for collective bargaining has been recognized by this Court (*American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209), and held to be a right of property. *Texas & New Orleans R. Co.* v. *Brotherhood*, 281 U. S. 548, 571. By protecting this existing right of private collective bargaining, the statute seeks to maintain and protect some semblance of that equality and liberty of contract which petitioner strangely claims the statute would destroy. If employees desire to exercise their freedom to contract collectively, petitioner may not destroy this freedom by destroying the

only means whereby such collective action may be achieved, namely, through freedom in self-organization and choice of representatives. This Court so held in the clearest language in the *Texas & New Orleans* case, pointing out that "such collective action would be a mockery if representation were made futile by interferences with freedom of choice." 281 U. S. at p. 570. Thus, if employees desire, they may use their collective bargaining power in establishing contractual arrangements with respect to the terms and conditions of their work. The statute protects their liberty so to do. By preventing petitioner from destroying this liberty, no right of petitioner is infringed. (*Id.*)

PETITIONER'S POINT IV

The Act, as here applied and under the facts of this case, does not abridge the freedom of the press guaranteed in the First Amendment. The Act imposes no previous or subsequent restraint or censorship whatever; it levies no discriminatory tax; the petitioner is utterly free "to present the news it wants to as it wants to" (Br. p. 19). It was not even claimed by petitioner that the employee here in question was discharged because of bias in editing news; he was discharged because of his activity as a member of an organization of petitioner's employees devoted to ameliorating their conditions of work and as a destructive blow at their right to associate for purposes of collective bargaining and other mutual aid and protection.

Petitioner may not invoke the constitutional guarantee of freedom of the press as a cloak for destroying the freedom of its employees thus to associate among themselves.

Wherefore, in order that the power of Congress to protect interstate and foreign commerce by the provisions of the statute invoked against petitioner, and under the facts of this case, may be settled by this Court, and because the questions for decision are properly raised under the procedure of the statute,[2] it is respectfully prayed that the petition for a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Second Circuit be allowed.

Respectfully submitted.

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SEPTEMBER 1936.

[2] In *Bradley Lumber Co.* v. *National Labor Relations Board*, No. 153, October Term, 1936, the Government opposes the petition for certiorari in part because the constitutional questions sought to be raised were improperly presented in a manner contrary to the procedure prescribed by Section 10 of the Act.

APPENDIX

NATIONAL LABOR RELATIONS ACT, (ACT OF JULY 5, 1935, C. 372, 49 STAT. 449; U. S. C., SUP. I, TITLE 29, SECS. 151 ET SEQ.)

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials of manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the

purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133 [1] approved June 14, 1935.

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all

[1] So in original.

the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of

conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified

from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership

in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain [2] such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

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[2] So in original.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of

Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds

for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript

of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board

shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of serv-

ice of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707 (a)), as amended from time to time, or of section 77 B, paragraphs (l) and (m) of the Act ap-

proved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

Approved, July 5, 1935.

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